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8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

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11 RUTHANN TAYLOR CORBIN,
12 Plaintiff,
13 vs.
14 UNITED AIRLINES AND GARY
15 PRZYBYLEK,
16 Defendants.

Case No. CV-S-06-01038-JCM (PAL)

[PROPOSED] ORDER OF DISMISSAL

17 IT IS HEREBY ORDERED Defendants' Motion to Dismiss is GRANTED. Plaintiff's
18 Complaint is dismissed in its entirety against Defendants, with prejudice and without leave to
19 amend.

20 Plaintiff's claims filed pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII") and
21 the Americans With Disabilities Act ("ADA") are time-barred. A claimant must file a civil action
22 within ninety days after the EEOC dismisses a charge. 42 U.S.C. § 2000e-5(f)(1). The ninety-day
23 period begins to run when delivery of the right-to-sue notice is attempted at the address of record
24 with the EEOC. Nelmida v. Shelly Eurocars, Inc., 112 F.3d 380, 384 (9th Cir. 1997).

25 Here, the EEOC sent a right-to-sue notice to Plaintiff at her address of record it had on file on
26 or about September 30, 2005. Plaintiff did not file her Complaint until August 24, 2006, nearly eight
27 months after the ninety-day period expired. Because Plaintiff failed to file her Complaint alleging
28 claims pursuant to Title VII and the ADA within ninety days of the date the EEOC issued its right-

1 to-sue notice and mailed it to Plaintiff's address of record, such claims are time-barred and are
2 dismissed accordingly.

3 There is no evidence to justify or support the application of the doctrine of equitable tolling.
4 Specifically, there is no evidence that Plaintiff informed the EEOC of any change of address prior to
5 the date delivery of the right-to-sue notice was attempted at Plaintiff's address of record. When a
6 claimant does not receive the right-to-sue notice promptly because of her failure to notify the EEOC
7 of a change of address, she may not claim that the ninety-day time period is equitably tolled.
8 Nelmida, 112 F.3d at 384 (citing Hunter v. Stephenson Roofing, Inc., 790 F.2d 472, 475 (6th Cir.
9 1986)). Therefore, because Plaintiff failed to inform the EEOC of her change of address, the
10 doctrine of equitable tolling is inapplicable to the present matter. Thus, Plaintiff's untimely claims
11 are properly dismissed.

12 **IT IS SO ORDERED this** 8th day of December, 2006.

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14 **UNITED STATES DISTRICT JUDGE**

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PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 50 West Liberty Street, Suite 400, Reno, Nevada 89501. On November 30, 2006, the following document(s) were served on the party below: **[PROPOSED]**

ORDER OF DISMISSAL

By CM/ECF Filing – with the United States District Court of Nevada, a copy of the Court's notification of e-filing is attached to the hard copy for either faxing, mailing, overnight delivery, and/or hand-delivery.

By United States Mail – a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Reno, Nevada addressed as set forth below.

By **Facsimile Transmission** – the transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached to the hard copy. The names and facsimile numbers of the person(s) served are as set forth below.

By **Overnight Delivery** – by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.

By **Hand-Delivery – via messenger**, a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

Ruthann Taylor Corbin
5161 Lindell Road, #202
Las Vegas, NV 89118

Plaintiff *Pro Se*

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 30, 2006, at Reno, Nevada.

TARYN CIARDELLA
/s/